

June 15, 2005

ADMINISTRATIVE LETTER 2005 -11

TO: ALL PROPERTY & CASUALTY COMPANIES LICENSED IN  
VIRGINIA AND ALL RATE SERVICE ORGANIZATIONS  
LICENSED IN VIRGINIA

RE: AMENDMENTS TO § 38.2-231 OF THE CODE OF VIRGINIA;  
WITHDRAWAL OF ADMINISTRATIVE LETTERS 1986-10,  
1986-18, AND 1987-14

Pursuant to House Bill No. 1882 and House Bill No. 2410, effective July 1, 2005, § 38.2-231 of the Code of Virginia has been amended to require insurers of commercial liability insurance (including commercial package policies), commercial automobile insurance, and certain types of miscellaneous casualty insurance to provide a notice to the named insured when there has been a premium increase greater than 25%. Additionally, medical malpractice insurers must provide at least 90 days' notice when the policy is being cancelled or non-renewed or when the renewal premium will be increased by more than 25% of the premium charged by the insurer at the effective date of the expiring policy. The changes to § 38.2-231 apply to policies with effective dates on or after July 1, 2005.

Furthermore, because of these changes and other changes that have been made to § 38.2-231, Administrative Letters 1986-10, 1986-18, and 1987-14 are hereby withdrawn. Due to inquiries from insurers regarding the changes effective July 1, 2005, the Bureau believes it would be helpful to highlight the specific changes to the statute and then address the insurers' most frequently asked questions.

- *Prior* to July 1, 2005, insurers were required to notify insureds when the filed rate increased by more than 25%. Insurers are *now* required to notify insureds when the renewal premium is increased by more than 25% of the premium charged by the insurer at the effective date of the expiring policy.
- Section 38.2-231 L was added pertaining *only* to policies of medical malpractice insurance as defined in § 38.2-2800. The requirement of 45 days' advance notice for canceling or non-renewing policies as well as increasing the premium by more than 25% is replaced by the requirement that 90 days' advance notice be given. All other provisions of § 38.2-231 apply.

- The statute now specifically applies to policies of miscellaneous casualty insurance as defined in subsection B of § 38.2-111 insuring a business entity.

## **Most Frequently Asked Questions Regarding Section 38.2-231**

### **GENERAL QUESTIONS**

#### **1. What lines of business are subject to this section?**

Section 38.2-231 applies to all policies of insurance as defined in §§ 38.2-117 and 38.2-118 that insure a business entity, or policies of insurance that include in part insurance as defined in §§ 38.2-117 or 38.2-118 insuring a business entity. Section 38.2-231 also applies to policies of insurance as defined in § 38.2-124 insuring a business entity and to policies of insurance as defined in subsection B of § 38.2-111 insuring a business entity.

Such policies include but are not limited to commercial automobile liability, commercial package policies (that include liability coverage), commercial general liability, professional liability, commercial umbrella, directors' and officers' liability, errors and omissions, employment related practices liability, gap insurance, and tuition refund policies.

Also, because the provision that triggers notice requirements is now based on increases in *premium*, rather than increases in the *filed rate*, such notice requirements will now apply to classes of insurance that are exempt from rate-filing requirements, such as directors' and officers' liability, pollution liability, employment practices liability, and others. Previously, notice requirements did not apply to classes of insurance where there were no filed rates.

Workers' compensation policies are not subject to this statute.

#### **2. Are any policies as defined in §§ 38.2-117, 38.2-118, 38.2-124 or 38.2-111 covering a business entity exempt from § 38.2-231?**

Yes. For example, the definition of a "policy of motor vehicle insurance" in § 38.2-231 H excludes policies issued through the Virginia Automobile Insurance Plan. Please refer to this subsection for additional exemptions.

**3. What evidence of mailing does the insurer need to retain if the notice is mailed using the U.S. Postal Bulk Mailing procedure?**

If the notices are mailed using the U.S. Postal Bulk Mailing procedure, the company is required to comply with § 38.2-231 F 1 (c) and the company must retain the following:

- a. A copy of the notice;
- b. The completed U.S. Postal Bulk Mailing Form which indicates the date of mailing and the number of items mailed;
- c. The mailing list showing the name and address stated in the policy, or the last known address, to whom the notices were mailed; and
- d. A signed statement by the insurer that the written receipt from the Postal Service corresponds to the mailing list retained by the insurer.

**4. When an insurer moves an insured from one company within the group to another, is the insurer required to provide notice to the insured?**

Yes. If the renewal offer is not issued by the expiring insurer, a non-renewal notice is required even when coverage is being offered by another insurer within the same group of companies.

**QUESTIONS APPLICABLE TO PREMIUM INCREASES**

**5. If the expiring policy's premium changed during the expiring policy's term, how does the insurer determine if the renewal premium has increased more than 25%?**

The percentage of increase should be calculated by comparing the renewal premium to the premium charged at the effective date of the expiring policy.

**6. Is a notice required if the insured adds new exposures to the policy within 45 days of the renewal effective date and prior to the issuance of the renewal or the renewal quote if the new exposures result in a premium increase of more than 25%?**

In this case, the insurer must provide the insured with the notice even though the notice period extends beyond the expiration of the prior policy.

- 7. If the insured requests changes to the policy after the renewal has been issued, does the insurer have to provide notice if the changes resulted in an increase over 25%?**

No. Based on the language in § 38.2-231 C, if the renewal has already been issued or a renewal quote has been issued, the insurer is not required to send notice.

- 8. What if the insurer fails to provide proper notification of a premium increase over 25%?**

Subsection D of § 38.2-231 requires the insurer to send another notice which would allow the insured 45 days to accept or reject the renewal.

- 9. If a policy is extended for 45 days because the insurer failed to provide proper notice, what rates apply?**

If, during the extended time period, the insured refuses the policy, the rates that applied to the prior policy term will be applied to the extended coverage period; otherwise, if the insured accepts the increase, the increase will take effect upon the expiration of the prior policy.

- 10. What happens if the insurer did not provide proper notice and the increase in premium was based solely on new exposures that were added at the request of the insured?**

In this case, the insurer must extend coverage under the prior terms and conditions until proper notice has been given as required by subsection D of § 38.2-231. During the extended time period, the insurer would charge for all of the coverages the insured requested. If the insured refuses the increase during the extended time period, the rates that applied to the prior term will be applied to the extended coverage term; otherwise, the rates for the new policy term will apply.

- 11. Is the insurer required to provide a specific reason when increasing the premium over 25%?**

The law now only requires the insurer to state in the notice that the specific reason for the increase and the amount of the increase may be obtained from the agent or the insurer.

## **QUESTIONS APPLICABLE TO REDUCTIONS IN COVERAGE**

### **12. When must an insurer provide the notification required under this statute for a reduction in coverage?**

The notification for reduction in coverage applies only when a class, line, or subdivision of insurance has been declared non-competitive pursuant to § 38.2-1912. If the policy is subject to § 38.2-1912, the company is required to provide the insured 45 days' notice that there has been a reduction in coverage. The notice must also advise the insured of the right to request a review by the Commissioner of Insurance and that the specific reason for the reduction and the manner in which coverage will be reduced may be obtained from the agent or the insurer.

### **13. How does an insurer find out what lines of coverage are subject to § 38.2-1912?**

Currently, no lines of insurance that are subject to § 38.2-231 come under the "delayed effect" provisions of § 38.2-1912. For example, workers' compensation rate filings are subject to § 38.2-1912, but workers' compensation insurance is not subject to § 38.2-231. If a line of insurance or coverage is determined to be subject to the "delayed effect" provisions of § 38.2-1912, the Bureau will issue a Commission order. It is the insurer's responsibility to know when a line of coverage is subject to § 38.2-1912. However, Commission orders are mailed to insurers and are posted on the Bureau's website.

### **14. What if the insurer fails to provide proper notification of a reduction in coverage?**

Subsection D of § 38.2-231 states that if the insurer does not provide notice in the manner required, coverage will be extended until 45 days after proper notice is given.

### **15. What coverage applies when the policy has been extended because the insurer failed to provide proper notification of a reduction in coverage?**

In this case, if the insured refuses the reduction in coverage, coverage for any period that extends beyond the expiration date will be under the prior policy's terms and conditions. If the insured accepts the reduction in coverage, the reduction will take effect upon the expiration of the prior policy.

## **QUESTIONS APPLICABLE TO CANCELLATIONS AND NONRENEWALS**

**16. When the insurer gives a specific reason for terminating coverage, what is considered a specific reason?**

The insurer is required to provide a specific reason that is clear enough for the insured to know the reason the policy is being cancelled or non-renewed. The Bureau does not consider the following examples to be specific reasons: "loss history," "driving record," "claims," "prohibited risk," "underwriting reason," "loss history unacceptable," "engineering report," "inspection report," or "loss ratio exceeds acceptable margin."

**17. Is the insurer required to give 90 days' notice when canceling a medical malpractice policy for non-payment of premium?**

No. Only 15 days' advance written notice is required for cancellations resulting from non-payment of premium. The law did not change any of the notice provisions pertaining to non-payment of premium.

If you have any questions regarding this administrative letter, please contact Carol Howard, Supervisor of the Property & Casualty Consumer Services Section, at (804) 371-9394 ext. 4692.

Sincerely,

Alfred W. Gross  
Commissioner of Insurance